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SIPDIS

DEPT FOR EUR/CACEN (J. MUDGE), EUR/PRA (J. CONLON), EB/IFD
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TREASURY FOR CENTRAL ASIA DESK OFFICER M. GAERTNER

SENSITIVE

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SUBJECT: KAZAKHSTAN: COURT REFUSES TO ENFORCE BYELKAMIT
ARBITRATION AWARD

REF: 05 Almaty 3173 and previous

1. (SBU) Summary: A Kazakhstani court has refused to enforce the London Court of International Arbitration's award of legal fees to U.S. firm Byelocorp Scientific Inc. (BSI). BSI will contest the ruling, which asserted that enforcement of the LCIA award would be "detrimental to public order in Kazakhstan." In the meantime, the politically influential Kazakhstanis behind the original effort to expropriate BSI's 65% stake in Byelkamit have stripped the defendant companies of all assets and are threatening additional legal action against BSI. The final decision in the case will have a significant impact on the Kazakhstani investment climate, particularly for small and medium sized investors likely to rely on arbitration. End summary.

LCIA Finds in Favor of BSI

2. (U) On November 22, 2005, the London Court of International Arbitration (LCIA) ruled in favor of Byelocorp Scientific Inc. (BSI) in its dispute with Kazakhstani firms that had tried to expropriate its shares in Byelkamit (reftel). LCIA awarded BSI 194,365.89 in legal fees. BSI then turned to the Kazakhstani courts to enforce the decision against defendants Kulan Group, Giprosvyaz, and Web.KZ.

Kazakhstani Defendants Play Dirty...

3. (SBU) On December 20, the Astana Economic Court issued a ruling freezing the assets of the defendants pending a decision on enforcement. According to BSI lawyer Yerlanbek Zhussupov, however, the three defendant firms were stripped of assets before the court order took effect. On November 7, all the shares of Web.KZ and Kulan Group were sold to Giprosvyaz. On December 13, all shares and property of Giprosvyaz were transferred to a firm called Gidromash Group LLP.

4. (SBU) Zhussupov shared with POEC chief a copy of a December 31 letter from Kazakh Institute of Oil and Gas president Serik Burkibayev's assistant Yermek Ashkenov to BSI president Lowell Mintz. In the letter, Ashkenov demands that BSI pay damages and transfer its remaining two percent stake in Byelkamit. Ashkenov threatened further legal action in Kazakhstan and London in the event agreement is not reached. In what appeared to be an open threat to use political leverage, Ashkenov wrote "as the election campaign is over and the political situation is stable, there is a good chance that legal action will result in the complete satisfaction of HOZU Engineering's demands..."

5. (SBU) Ashkenov also alleged that Byelkamit possessed documents related to the manufacture of equipment for the "strategic chemical complex in Iraq" by BSI subsidiary Supcodue S.R.L. Zhussupov told POEC chief that the claims regarding Iraq were completely spurious and could not be used against BSI. According to Zhussupov, an Italian company owned by the same person who owns Supcodue participated in the Oil-for-Food program. The participation was completely above board, he stressed, and unrelated to BSI or its activities in Kazakhstan.

...and Court Refuses to Enforce Award

6. (U) On January 23, the Astana Economic Court announced its decision not to enforce the LCIA ruling. The court pointed to the fact that LCIA did not specify how the defendants should divide up the legal costs among themselves. As a result, the judge reasoned, enforcement of the order would be "detrimental to public order in

Kazakhstan." He cited Article 228, para. 2 of the Civil Code, as well as Article 33 of the law "On International Commercial Arbitration," as justification of his decision.

17. (SBU) Zhussupov characterized the ruling as "far-fetched" and surmised that pressure had been successfully applied to the court. BSI will appeal the ruling, according to Zhussupov, and has the option of applying to either the Almaty or Astana city court.

Comment

18. (SBU) Comment: As BSI successfully defended its interests in this case and obtained \$5 million for its shares in Byelkamit, the question of whether it ultimately receives roughly \$346,000 in legal fees is somewhat secondary. The case is an important precedent for other potential foreign investors, however. To date, Kazakhstan has dragged its heels on enforcement of one arbitration ruling (AIG) and refused to enforce a second (BSI). A final decision to reject implementation of an international arbitration award, particularly on such laughable grounds, would undermine Kazakhstan's ability to attract foreign investors.

ASQUINO